

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

In Re: David W. Wagner

Debtor.

Case No. 18-10071
Chapter 7

MOTION FOR RELIEF FROM
AUTOMATIC STAY PURSUANT TO
11 U.S.C. SECTION 362(d)(1)

Wells Fargo Bank, NA dba Wells Fargo Auto, a secured creditor in the above-captioned bankruptcy case, by its counsel, Lynda Laing, Esq., as and for a Motion for Relief from Automatic Stay pursuant to 11 U.S.C. Section 362(d)(1), states the following as grounds therefore:

1. On January 17, 2018, the debtor, above-named, filed a voluntary petition in Bankruptcy under Title 11, Chapter 7, U.S.C., in the United States Bankruptcy Court, for the District of Rhode Island.
2. The Court has jurisdiction to entertain the motion under 28 U.S.C. Section 157.
3. Wells Fargo Bank, NA dba Wells Fargo Auto is a secured creditor herein and the holder of a duly perfected purchase money security interest in one (1) 2011 Volvo XC60 with VIN # ending 4226 (hereinafter "collateral") owned by, and upon information and belief, in the possession and control of the debtor, above-named.
4. Pursuant to 11 U.S.C. Section 362, upon the commencement of the instant bankruptcy case, Wells Fargo Bank, NA dba Wells Fargo Auto is stayed from taking any action against the debtor to obtain possession of the collateral.
5. On April 5, 2016, the debtor David W. Wagner, entered into a Retail Installment Contract (hereinafter "Contract") with International Motor Group (hereinafter "dealer") for the purchase of the collateral. Pursuant to the terms and conditions of the Contract, Wells Fargo Bank, NA dba Wells Fargo Auto was granted a purchase money security interest in the collateral. Thereafter, the Contract,

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pursuant to its terms, was duly assigned by the dealer to Wells Fargo Bank, NA dba Wells Fargo Auto for good and valuable consideration. Wells Fargo Bank, NA dba Wells Fargo Auto is now the holder and owner of said Contract.

6. As of October 11, 2018, the debtor was in default of his payment obligations to Wells Fargo Bank, NA dba Wells Fargo Auto pursuant to the terms and conditions of the Contract as follows:

- a. Payoff balance: \$17,815.11
- b. Pre- and post-petition arrearages: \$6,514.34 (together with Contractual late charges)

(NOTE: The foregoing does not represent any amount which may be due for costs and attorneys' fees as may be allowed by the Court.)

7. Upon information and belief, the value of the collateral is depreciating.
8. Upon information and belief, the Movant is in possession of the collateral.
9. The debtor has failed to elect to redeem the collateral and has not sought to reaffirm his underlying obligations to Wells Fargo Bank, NA dba Wells Fargo Auto
10. It is respectfully asserted that Wells Fargo Bank, NA dba Wells Fargo Auto's interest in the collateral will not be adequately protected if the automatic stay is allowed to remain in effect.

11. Accordingly, sufficient cause exists to grant Wells Fargo Bank, NA dba Wells Fargo Auto relief from the automatic stay herein which includes, but is not limited to, the following:

- a. The debtor is in default under the terms and conditions of the Retail Installment Contract.
- b. The security interest of Wells Fargo Bank, NA dba Wells Fargo Auto with respect to the collateral is not adequately protected as envisioned under 11 U.S.C. Section 361.
- c. The debtor does not possess an equity interest in the collateral.
- d. The collateral is not necessary for an effective reorganization of a bankruptcy estate.

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12. It is respectfully submitted that Wells Fargo Bank, NA dba Wells Fargo Auto is in a more advantageous position to obtain an optimum price for the sale of the collateral thereby increasing the possibility of generating a surplus for distribution to creditors of the estate.

13. No prior application for the relief requested herein has been made.

WHEREFORE, Wells Fargo Bank, NA dba Wells Fargo Auto respectfully requests that the Court issue an Order, pursuant to 11 U.S.C. Section 362 granting Wells Fargo Bank, NA dba Wells Fargo Auto relief from automatic stay in order to obtain possession of its collateral, and for such other and further relief as to the Court may seem just and proper.

DATED: October 22, 2018

WELLS FARGO BANK, NA DBA WELLS
FARGO AUTO
By its counsel:

/s/ Lynda Laing
Lynda Laing, Esq. #3082
Strauss, Factor, Laing & Lyons
One Davol Square, Suite 305
Providence, RI 02903
Tel. (401) 456-0700
Fax. (401) 421-4730

Within fourteen (14) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail or other expected means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.

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CERTIFICATION OF SERVICE

I hereby certify that on October 23, 2018, I electronically filed the Motion with the Clerk of the Bankruptcy Court for the District of Rhode Island using the CM/ECF System. The following participants have received notice electronically; Office of the US Trustee, Russell Raskin, Esquire, Stacy Ferrara, Esquire, Peter Furness, Esquire, Elizabeth Lonardo, Esquire, Matthew McGowan, Esquire, Catherine Eastwood, Esquire, and Charles Pisaturo, Jr., Esquire; and I hereby certify that I have mailed by United States Postal Service, postage prepaid, the document and a copy of the Notice of Electronic Filing to the following:

David W. Wagner
55 Downing Street
East Greenwich, RI 02818

James Wagner
55 Downing Street
East Greenwich, RI 02818

American Express National Bank
c/o Becket & Lee LLP
PO Box 3001
Malvern, PA 19355

State of Rhode Island – Division of Taxation
Rhode Island Division of Taxation
Bankruptcy Unit
One Capitol Hill
Providence, RI 02908

/s/ Lynn Morrison
Lynn Morrison